49TH CONGRESS, 2d Session. } SENATE. { REPORT No. 1898.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1887.—Ordered to be printed.

Mr. MAXEY, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill S. 3304.]

The Committee on Indian Affairs, to which was referred the bill (S. 3304) to authorize the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Nations of Indians, respectively, to lease lands within their respective boundaries for mining purposes, subject to the approval of the Secretary of the Interior, and to validate leases heretofore made for said purposes, by the proper authorities of any of said nations, respectfully submits the following report:

There are valuable coal mines, as the committee is advised, undeveloped, within the limits of the Indian Territory. This coal would find a ready and profitable market if authority for its mining be granted. Under an opinion of the Attorney-General made part of this report, the said nations have no authority to lease to citizens of the United States, nor has any Indian or other resident within said Territory such authority, and the Secretary of the Interior has no authority to approve any such contract of lease however advantageous it may be to the Indians. There are now in operation in the Choctaw Nation the McAllister, the Segbigh, and perhaps some other coal mines. These mines have ready market for their output, and the Indians receive a royalty on each bushel of coal mined, thus adding very materially to their treasury.

The effect of the opinion of the Attorney-General, and action thereon, is to establish a monopoly in the owners of the developed mines, to the injury of the Indians and the consumers of the coal. It is the opinion of the committee that it is to the interest of the Indians, as well as to commerce, that these coal fields be developed. The committee refers to an act to authorize the Seneca Nation of Indians of New York to lease lands (see Statutes at Large, vol. 18, part 3, page 330), as a precedent in line with this bill. The committee amends by requiring all lease contracts to be subject to the approval of the Secretary of the Interior. This, together with the provisions of the bill that the contracts must be made by the proper authorities of the nations, respectively, amply protects the Indians.

As amended the committee recommends that the bill do pass.

The committee appends as part of this report the opinion of the Attorney-General referred to, marked Exhibit A, as part of this report.

EXHIBIT A.

DEPARTMENT OF JUSTICE,
Washington, October 14, 1886.

SIR: Yours of the 8th instant is received. You transmit a report of the Commissioner of Indian Affairs relating to agreements made between citizens of the Choctaw Nation of Indians, in the Indian Territory, and the Osage Coal and Mining Company, a corporation of the State of Missouri, for the mining of coal, &c., in said nation. One of the agreements is inclosed. An opinion is requested as to whether these agreements are such as may properly receive the approval of the Department of the Interior under existing laws.

A similar question arose heretofore as to the authority of the Interior Department to approve leases of land for grazing purposes, entered into by the Indians of the Cherokee, Cheyenne, Arapahoe, Kiowa, and Comanche tribes, in their respective reservations in the Indian Territory. The question of the power of the Department of the Interior to authorize leases to be made for grazing purposes was submitted to the Attorney-General, and in his opinion of 21st July, 1885, it is said:

"I submit that the power of the Department to authorize such leases to be made, or that of the President or the Secretary to approve or to make the same, if it exists at all, must rest upon some *law*, and therefore be derived from either a treaty or statutory provision. I am not aware of any treaty provision applicable to the particular reservations in question that confers such powers. The Revised Statutes contain provisions regulating contracts or agreements with Indians, and prescribing how they shall be executed and approved (see section 2103), but those provisions do not include contracts of the character described in section 2116, hereinbefore mentioned. No general power appears to be conferred by statute upon either the President or Secretary, or any other officer of the Government, to make, authorize, or approve leases of lands held by Indian tribes, and the absence of such power was doubtless one of the main considerations which led to the adoption of the act of February 19, 1875, chapter 90, 'to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases.' The act just cited is, moreover, significant, as showing that in the view of Congress Indian tribes cannot lease their reservations without the authority of some law of the United States."

No laws have been enacted by Congress upon the subject since the publication of the above opinion. The law has not, therefore, conferred any express power upon the President or Secretary to approve the mining leases referred to, and no such authority can be implied.

Upon an examination of the statutes and treaties, I feel justified in coming to the conclusion that it was the intention of Congress that the inhibition contained in section 2116, Revised Statutes, should have the same application to individual Indians that it has to the Indian nations and tribes.

I am of the opinion, therefore, that the mining leases referred to are not such as may properly receive the approval of the Department of the Interior, under existing laws.

I am, sir, very respectfully,

A. H. GARLAND,
Attorney-General.

The SECRETARY OF THE INTERIOR.